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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,033	12/14/2001	Hichem M'Saad	A6139/T43800	7470
32588	7590	10/27/2004	EXAMINER	
APPLIED MATERIALS, INC. 2881 SCOTT BLVD. M/S 2061 SANTA CLARA, CA 95050			HOFFMANN, JOHN M	
			ART UNIT	PAPER NUMBER
			1731	

DATE MAILED: 10/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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41025

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Commissioner for Patents

This application includes the following patentably distinct species of the claimed invention: Species A, wherein the HDP is used to fill the gaps and Species B wherein the HDP only partially fills the gap: PECVD is used to complete the fill. Applicant is entitled under 35 U.S.C. 121 to a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Newly submitted claims 1-18, 20-22 and 29 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

These claims are now directed to species B which were never previously presented for examination, nor were they searched for or examined. Claim 1 was previously directed to species A – where the gap is filled by HDP. They are further deemed distinct, because previously claim 23 precluded thermal annealing but, as per applicant's paragraph [71] the presently claimed invention is such that it the thermal annealing is generally "necessary". Still further rationale as to why the inventions are distinct: claim 17 as previously presented was directed to the "dep/etch/dep" (see box 524 of figure 5). It is clear that 524 box is a different species from that of box 528. Box 528 shows the species that claim 1 (and the rest of the claims) are now directed to.

The amendment filed on 27 September 2004 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because they are directed to a species that is mutually exclusive of the originally presented species.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

MPEP 819 Office Generally Does Not Permit Shift

The general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is once made and action given on the elected subject matter.

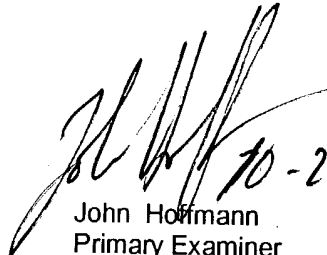
Note that the applicant cannot, as a matter of right, file a request for continued examination (RCE) to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined (i.e., applicant cannot switch inventions by way of an RCE as a matter of right). When claims are presented which the examiner holds are drawn to an invention other than the one elected, he or she should treat the claims as outlined in MPEP § 821.03.

37 CFR 1.145. Subsequent presentation of claims for different invention.

If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in § 1.143 and 1.144.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

 10-25-04
John Hoffmann
Primary Examiner
Art Unit: 1731